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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HELEN TODD, individually and as administratrix of the estate of her son, Kamal Bamadhaj, Plaintiff, v. SINTONG PANJAITAN, Defendant.	Civil Case No.: COMPLAINT FOR SUMMARY EXECUTION, WRONGFUL DEATH, ASSAULT AND BATTERY AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS JURY TRIAL DEMAND

PRELIMINARY STATEMENT

1. Plaintiff Helen Todd brings this action for compensatory and punitive damages against Sintong Panjaitan, an Indonesian general currently residing in the Commonwealth of Massachusetts, who designed, ordered, implemented and directed a program of systematic human rights violations which included the summary execution of plaintiff's son, Kamal Bamadhaj.

2. Plaintiff seeks damages for summary execution and other violations of customary international law, the laws of the United States, the laws of the Commonwealth of Massachusetts, and the laws of East Timor.

3. East Timor is under the illegal military occupation of Indonesia, in violation of the mandate of the United Nations. At the time of Bamadhaj's death, defendant Panjaitan was the Indonesian military commander of the region which includes East

Timor. Pursuant to the Indonesian military's program of eliminating all social, political or religious activities in East Timor which in any way challenge the illegal Indonesian rule, Panjaitan designed, ordered, implemented and directed a program of military repression which resulted in the murder of plaintiff's son.

JURISDICTION AND VENUE

4. This court has jurisdiction under the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 78 (1992); the Alien Tort Claims Act, 28 U.S.C. § 1350; 28 U.S.C. § 1331; and the principles of pendent and ancillary jurisdiction. The Torture Victim Protection Act provides federal jurisdiction for acts of torture and summary execution, no matter where committed. The Alien Tort Claims Act provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Plaintiff's causes of action arise under, among others, the following laws, agreements, resolutions and treaties:

a) Customary international law;

b) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);

c) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);

d) International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

e) Common law of the United States of America;

f) Laws of the Commonwealth of Massachusetts, including but not limited to common law principles of wrongful death, assault and battery, intentional infliction of emotional distress and respondeat superior; and

g) Laws of East Timor.

5. The United States District Court for the District of Massachusetts is the proper venue of this action pursuant to 28 U.S.C. § 1391.

PARTIES

6. **Defendant Sintong Panjaitan** is a citizen of Indonesia. At the time Kamal Bamadhaj was murdered, Panjaitan was the Indonesian military commander of the region which includes East Timor. In that capacity, he was personally involved in the Indonesian military's ongoing program of massive human rights abuses in East Timor, which included the summary execution of Bamadhaj. The Indonesian military held Panjaitan responsible for the massacre which resulted in Bamadhaj's death and transferred him from his position. He currently resides within the jurisdiction of this court.

7. **Plaintiff Helen Todd** is the mother of Kamal Bamadhaj, who was brutally executed in East Timor on November 12, 1991, by Indonesian soldiers acting under the orders of the defendant. Todd is a citizen of Malaysia. She sues on her own behalf and as administratrix of the estate of her son. Bamadhaj, a 20-year-old citizen of New Zealand, was a student at a university in Australia.

During the weeks before his death, he had been travelling through Indonesia and East Timor on his way home to Malaysia.

STATEMENT OF FACTS

8. East Timor, a colony of Portugal from the year 1702 until 1975, declared independence on November 28, 1975. Indonesia invaded just 10 days later, on December 7, 1975, and unilaterally annexed East Timor the following year. The United Nations does not recognize Indonesia's annexation, and continues to regard East Timor as a "non-self-governing territory" under the administration of Portugal.

9. In order to maintain control over the occupied territory, Indonesian military forces have detained, tortured, executed and "disappeared" tens of thousands of East Timorese, according to international human rights investigators. Suspected opponents of Indonesian rule have been sentenced to lengthy prison terms for political offenses. Forced relocations of the rural population have also led to tens of thousands of deaths due to starvation and disease. All social, political or religious activities in East Timor which challenge the illegal Indonesian rule have been ruthlessly repressed.

10. These gross and systematic violations of human rights have resulted in the deaths of as many as 200,000 people in East Timor since the 1975 invasion, out of a pre-invasion population of 600,000, according to Amnesty International.

11. During the latter half of 1991, the Indonesian military stepped up its repression in anticipation of a planned visit by a

United Nations-sponsored delegation consisting of deputies from the parliament of Portugal and diplomats and journalists from various nations. Members of the Indonesian military under the direction and control of defendant and acting pursuant to his orders traveled throughout East Timor warning villagers that they and their families "to the seventh generation" would be killed if they talked to members of the delegation or participated in demonstrations during the delegation's stay.

12. The United Nations/Portuguese delegation was canceled in late October, but the Indonesian military continued its campaign of violent repression and threats against the Timorese. On October 28, 1991, the Indonesian military stormed the Motael Catholic church and killed a young man who had taken sanctuary there after being hunted by the military. A mass at the church was scheduled for November 12, two weeks after the young man's death.

13. Kamal Bamadhaj, a 20-year-old university student in Australia, was travelling in Indonesia and East Timor during the weeks before his death. On the morning of November 12, he went to record the mass and to photograph the subsequent procession from the church to the cemetery where the young victim was buried.

14. The procession left the church after the mass. The route to the cemetery was patrolled by armed Indonesian security forces. The participants arrived at the cemetery shortly before 8:00 a.m. and gathered on the road outside, talking among themselves.

15. About ten minutes later, hundreds of uniformed soldiers carrying M-16 automatic rifles suddenly appeared, marching toward

the crowd. A group of troops sealed off one of the exit routes, while a column of soldiers, marching in formation, approached the crowd with their rifles drawn.

16. When the soldiers were within a dozen yards of the Timorese, they raised their rifles in unison and, without warning, opened fire. The soldiers shot into the densely packed crowd for approximately five to ten minutes. As victims fell to the ground, the soldiers continued firing at those still standing. Some were shot in the back while running away. The death toll at the cemetery is estimated at between 146 and 200 people. Most were buried by the military in unmarked mass graves, their names never recorded or counted.

17. Kamal Bamadhaj was in the crowd outside the cemetery when the soldiers began shocting. He was shot at least two times by the Indonesian soldiers and seriously wounded. He died shortly thereafter.

18. The massacre at the cemetery and the summary execution of Kamal Bamadhaj were part of a pattern and practice of systematic human rights violations designed, ordered, implemented and directed by the defendant and were committed by Indonesian military forces under the direction and control of defendant and acting pursuant to his orders.

GENERAL ALLEGATIONS

19. The acts described herein were inflicted under color of law and under color of official authority, and were inflicted deliberately and intentionally.

20. The acts and injuries to plaintiff's son described herein were part of a pattern and practice of systematic human rights violations designed, ordered, implemented and directed by the defendant and carried out by military personnel acting under his direction and control and pursuant to his orders.

21. This proceeding cannot be filed in East Timor, which is currently under the illegal military occupation of Indonesia. The Indonesian judiciary does not resolve cases of abuse filed by civilians against military officials, and any suit against the defendant in East Timor or Indonesia would be futile and result in serious reprisals against those raising the allegations.

FIRST CLAIM FOR RELIEF

(Summary Execution)

22. Plaintiff, on her own behalf and on behalf of the estate of her son, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 21 as if fully set forth herein.

23. The summary execution of Kamal Bamadhaj was a deliberate killing, not authorized as lawful punishment in accordance with due process of law.

24. This act of summary execution was in violation of the Torture Victim Protection Act, customary international law, 28 U.S.C. § 1350, the common law of the United States, the statutes and common law of the Commonwealth of Massachusetts, the laws of East Timor and the international treaties, agreements, conventions and resolutions described in paragraph 4 herein.

25. Plaintiff's son was placed in great fear for his life and

suffered severe physical abuse and agony and severe mental abuse prior to his death. As a result of this summary execution, plaintiff Todd and the estate of her son have been damaged in an amount to be proven at trial but which is in excess of $5,000,000.

26. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least $10,000,000.

SECOND CLAIM FOR RELIEF

(Wrongful Death)

27. Plaintiff, on her own behalf and on behalf of the estate of her son, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 21 as if fully set forth herein.

28. Plaintiff is the heir of Kamal Bamadhaj, whose summary execution by military personnel acting under the direction and control of defendant is described herein.

29. The death of plaintiff's next-of-kin was the result of the wrongful acts of defendant, who designed, ordered, implemented and directed a program of extrajudicial executions by military personnel acting under his direction and control and acting pursuant to his orders.

30. As a proximate result of defendant's summary execution of plaintiff's son, plaintiff Todd and the estate of her son have suffered pecuniary loss in an amount of at least $5,000,000, resulting from the loss of the society, comfort, attention, services and support.

31. Defendant's acts were willful, intentional, wanton,

malicious and oppressive and should be punished by an award of punitive damages in the amount of at least $10,000,000.

THIRD CLAIM FOR RELIEF

(Assault and Battery)

32. Plaintiff, on her own behalf and on behalf of the estate of her son, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 21 as if fully set forth herein.

33. Defendant's shooting of Kamal Bamadhaj, constitutes assault and battery, actionable under the laws of Massachusetts, the laws of the United States and the laws of East Timor.

34. As a result of defendant's acts, Bamadhaj was placed in great fear for his life and suffered severe physical and psychological abuse and agony. As a result of the assault and battery described above, plaintiff Todd and the estate of her son have been damaged in an amount to be proven at trial but which is in excess of $1,000,000.

35. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least $2,000,000.

FOURTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress)

36. Plaintiff, on her own behalf and on behalf of the estate of her son, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 21 as if fully set forth herein.

37. Defendant's summary execution of Kamal Bamadhaj constituted outrageous conduct in violation of all normal standards

of decency and were without privilege or justification.

38. Defendant's outrageous conduct was intentional and malicious and done for the purposes of causing plaintiff and her son to suffer humiliation, mental anguish and extreme emotional and physical distress.

39. Defendant's outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of Massachusetts, the United States and East Timor.

40. As a result of defendant's acts, Bamadhaj was placed in great fear for his life and was forced to suffer severe physical and psychological abuse and agony. As a result of the intentional infliction of emotional distress described above, plaintiff Todd and the estate of her son have been damaged in an amount to be proven at trial but which is in excess of $1,000,000.

41. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least $2,000,000.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Todd, individually and as the administratrix of the estate of her son, prays for judgment against the defendant as follows:

a) For compensatory damages according to proof;

b) For punitive and exemplary damages according to proof;

c) For reasonable attorneys' fees and costs of suit, according to proof; and

d) For such other and further relief as the court may deem just and proper.

A jury trial is demanded on all issues.

Respectfully submitted,

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